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Before the
FEDERAL COMMUNICATIONS COMMISSION RECEIVED
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In The Matter of

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

IMPLEMENTATION OF THE PAY
TELEPHONE RECLASSIFICATION AND
COMPENSATION PROVISIONS OF THE
TELECOMMUNICATIONS ACT OF 1996

CC Docket No. 96-128

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COMMENTS OF
TOUCH 1 COMMUNICATIONS, INC.
IN SUPPORT OF PETITIONS FOR RECONSIDERATION

Touch 1 Communications, Inc. ("Touch 1"), through undersigned counsel and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), hereby submits its comments in support of selected requests that the Commission reconsider certain elements of the Report and Order, FCC 96-388, released in the captioned docket on September 20, 1996 (the "Order"). The petitions here supported at least in part by Touch 1 include those filed by AT&T Corp. ("AT&T"), MCI Telecommunications Corporation ("MCI"), Sprint Corporation ("Sprint"), WorldCom, Inc. d/b/a LDDS WorldCom ("WorldCom"), Cable and Wireless, Inc. ("C&W"), and Paging Network, Inc. ("PNI") (collectively, "Petitioners"). Specifically, Touch 1 supports these Petitioners in urging the Commission to revisit the "default" amount of per-call compensation afforded payphone service providers ("PSPs") and the mechanism adopted by the Order for determining subsequent compensation levels, as well as certain elements of the mechanism by which the Commission's per-call payphone compensation arrangement will be administered.

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I.

INTRODUCTION

Touch 1 is a relatively small privately-held interexchange carrier ("IXC") dedicated to the provision of high quality, affordable long distance service to residential customers. Renowned for its superior customer service, Touch 1 also performs customer service functions for far larger carriers. A national carrier, Touch 1 serves customers resident throughout the country.

Touch 1 is somewhat unique in the manner in which it structures its network operations. Touch 1 is a non-facilities-based carrier which owns neither switching nor transmission facilities. Unlike most other non-facilities-based providers, however, Touch 1 obtains carrier access from local exchange carriers ("LECs") and often utilizes its own carrier identification code ("CIC") to serve its customers. Touch 1 does so through switch sharing arrangements with its underlying carriers. Accordingly, it appears that Touch 1 may be required under the Order to track payphone-originated calls and compensate PSPs directly for toll free and access code calls originated on their equipment even though it is a non-facilities-based provider.

Touch 1 understands that the Commission is required by Section 276 of the Telecommunications Act of 1996 ("1996 Act") to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every call completed intrastate and interstate call using their payphone."¹ Touch 1 is, however, concerned that the per-call compensation plan adopted in the Order will interfere with its ability to continue to provide its customers the high quality, affordable service to which they have grown

¹ Pub. L. No. 104-104, 110 Stat. 56, § 276 (1996).

accustomed. While Touch 1 certainly does not begrudge PSPs their desire to be fairly compensated for use of their facilities, the compensation afforded PSPs by the Order appears to exceed fair compensation by a wide margin, producing an unjustified "windfall" for "mini-monopoly" providers.

Touch 1, accordingly, urges the Commission to revisit certain presumptions underlying the interim default amount of and the mechanism for ultimately determining the fee for originating toll free and access code calls from payphones. Touch 1 also supports certain recommendations made by various IXC Petitioners for mitigating the burden of tracking and compensating PSPs for payphone-originated toll free and access code calls and for reducing the potential for fraud.

II

ARGUMENT

A. Market-Driven Pricing is Inappropriate in a Mini-Monopoly Environment

In its Order, the Commission acknowledged that "there are certain locations where, because of the size of the location or the caller's lack of time to identify potential substitute payphones, no 'off-premises' payphone serves as an adequate substitute for an 'on-premises' payphone."² For transient callers, this is unfortunately more often the rule than the exception. Contrary to the Commission's stated belief, most payphones will not "face a sufficient level of competition from payphones at nearby locations to ensure that prices are at a competitive level."³

² Order, FCC 96-388 at ¶ 15.

³ Id.

And even where alternatives are reasonably proximate, how realistic is it to assume that a consumer, having located a payphone in an airport, or in a parking garage, or in a restaurant or on the street, will elect not to use that phone and seek out another because the first phone requires a deposit of 35¢, or 50¢ or even a \$1.00.

The real competition in the payphone market is between PSPs for access to prime locations. As the Commission has recognized, location providers can often "contract exclusively with one PSP to establish that PSP as the monopoly provider of payphone service."⁴ This competition drives upward commissions payable to location providers not downward rates charged to payphone users. Indeed, this competition not only encourages PSPs to charge higher, not lower, rates, but effectively demands, as well as enables them, to assess supra-competitive charges. And the irony is that the long-run beneficiary of this price inflation will not be the PSP, but the location provider.

Hence, pegging toll free and access code payphone use fees to market-based local coin rates will all but ensure that such use fees will be inflated, and perhaps grossly inflated.⁵ Any amounts lost to consumer antipathy to making excessive coin deposits can be recovered through toll free and access code calls which many consumers will pay in the form of higher overall rates and of which most consumers will be wholly unaware.

Touch 1, accordingly, concurs with AT&T that per-call payphone compensation should be predicated upon a cost-based pricing methodology based on forward-looking economic costs -- *i.e.*, compensation should be based on total service long-run incremental cost

⁴ *Id.*

⁵ *See generally* Petitions of AT&T (at 11 - 12), of MCI (at 2 - 4, 11 - 12), of Sprint (at 2 - 3), and of WorldCom (at 9 - 10).

("TSLRIC").⁶ As the Commission recognized in pricing interconnection to local exchange networks and unbundled local exchange network elements, "economists generally agree that prices based on forward-looking long-run incremental costs (LRIC) give appropriate signals to producers and consumers and ensure efficient entry and utilization of the telecommunications infrastructure."⁷ Certainly, it is not inappropriate to include, as the Commission did in its Local Competition Order, in such TSLRIC-based pricing a "reasonable return on investment (*i.e.*, profit), plus a reasonable share of the forward-looking joint and common costs."⁸ It is, however, no more appropriate with respect to payphones than it was with regard to unbundled network elements to predicate prices on embedded, or worse yet opportunity, costs. As to the former, the Commission acknowledged that "an 'embedded-cost'-based pricing methodology would be pro-competitor . . . rather than pro-competition" and as to the latter, the Commission correctly concluded that opportunity cost-based pricing would never "drive prices toward competitive levels."⁹

If TSLRIC-based pricing fairly compensates incumbent local exchange carriers ("ILECs") for interconnection to, or for use on an unbundled basis of, their networks and appropriately balances the interests of incumbents, competitors and consumers in the monopoly local exchange market, Touch 1 is hard pressed to understand why TSLRIC-based pricing would

⁶ Petition of AT&T (at 5 - 8); *see also* Petition of PNI (at 6- 8).

⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 630 (released August 8, 1996), *pet. for rev. pending sub nom. Iowa Utilities Board v. FCC*, Case No. 96-3321 (8th Cir. Sept. 5, 1996) ("Local Competition Order").

⁸ *Id.* at ¶ 673.

⁹ *Id.* at ¶¶ 704 - 11.

not fairly compensate PSPs and appropriately balance competing interests in the mini-monopoly payphone market.

B. Local Coin Rates are Not an Appropriate Surrogate for Per-Call Payphone Compensation

In its Order, the Commission concludes that "[i]f a rate is compensatory for local coin calls, then it is an appropriate compensation amount for other calls as well, because the costs of originating the various types of payphone calls are similar."¹⁰ Touch 1 respectfully submits that the record in this proceeding demonstrates otherwise. Indeed, the record clearly shows that use of local coin rates as a pricing surrogate will grossly inflate payphone use fees for toll free and access code calls.

First, as Sprint points out, revenues currently generated by local coin calls and "0+" commissions already produce between two to three times the annual costs of providing a payphone.¹¹ Second, as numerous Petitioners demonstrate, local coin rates are not appropriate surrogates for the Commission per-call compensation mechanism because they are designed to recover costs simply not incurred in originating toll free and access code calls.¹² Thus, the local coin rate must compensate the PSP not only for use of its telephone equipment, but for transporting the call through the local calling area to the end office terminating the call. In sharp contrast, it is the IXC that bears the cost of transporting a payphone-originated toll free or access code call from the payphone location to its ultimate destination, including the costs of local

¹⁰ Id. at ¶ 70.

¹¹ Petition of Sprint (at 2).

¹² Petitions of AT&T (at 9 - 10), of MCI (at 12 - 13), of Sprint (at 3 - 4), of WorldCom (at 8 - 9), of C&W (at 5 - 6) and of PNI (at 10 -12).

transport and long distance transmission. In other words, in paying a toll free or access code payphone usage fee, an IXC is paying only for use of the telephone, not for call completion. Third, again as demonstrated by multiple Petitioners, the costs associated with providing coin service differ markedly from the costs associated with providing coinless service.¹³ Thus, the local coin rate must recover the substantial labor-intensive costs associated with coin collection and counting, as well as other unique costs associated with coin rating and coin fraud. In short, local coin rate-based payphone usage fees for originating toll free or access code calls are neither cost-based nor fair; indeed, they would produce a substantial windfall for PSPs. Even the American Public Communications Council ("APCC") concedes that "the local coin rate should be higher than the rate for a non-sent paid call because of the usage and coin collection costs typically associated with local coin calling."¹⁴

As an arguably local coin-based rate, the interim 35¢ default payphone usage fee suffers from the deficiencies identified above and more. The 35¢ default payphone use fee reflects "the local coin rate in four of the five states that have deregulated their local calling rates."¹⁵ Not only is this a strikingly small sample, but again as emphasized by a number of Petitioners,¹⁶ the states involved -- *i.e.*, Iowa, Nebraska, North Dakota and Wyoming -- are hardly representative of the demographics of the country as a whole. Indeed, it is quite likely that payphone concentration in these rural states is lower than the national average and that as a result

¹³ Petition of AT&T (at 9 - 10), of MCI (at 12 - 13), of Sprint (at 3 - 4), of WorldCom (at 8 - 9), of C&W (at 5 - 6) and of PNI (at 12 - 13).

¹⁴ Comments of APCC filed July 1, 1996 at p. 16, n. 15.

¹⁵ Order, FCC 96-388 at ¶ 72.

¹⁶ Petition of AT&T (at 10 - 11), of MCI (at 15), and of WorldCom (at 10).

local coin rates are inflated. Even the RBOC Payphone Coalition ("RBOCs") concedes that the 35¢ default payphone use fee overstates the cost of providing payphone service, noting that the cost of originating payphone calls ranges between 25¢ and 32¢ per call.¹⁷

In short, the 35¢ default payphone use fee is inflated and this inflation will likely grow as toll free and access code payphone use fees float with market-driven local coin rates.¹⁸ Touch 1, accordingly, urges the Commission to prescribe a fixed fee which reflects the costs associated with providing non-sent paid, rather than local coin, calls. Absent such a cost-based fixed fee, IXC's will be denied the opportunity to make informed judgments regarding acceptance of calls from individual payphones because they will have no way of knowing what fees they will be incurring in so doing.¹⁹

**C. Certain Modifications are Necessary or Appropriate
in the Mechanism Established for Administering the
Per-Call Payphone Compensation Scheme**

A number of Petitioners urge the Commission to reconsider various aspects of the mechanism established for administering the per-call payphone compensation scheme adopted in the Order. Touch 1 concurs with several of these recommendations.

Fraud is an issue of deep concern for relatively small carriers which are less able because of their size to absorb major financial blows. Accordingly, Touch 1 supports MCT's request that the Commission direct all non-LEC PSPs to transmit the "70" coding digits and all

¹⁷ Comments of RBOCs filed July 1, 1996 at p. 15, n. 15.

¹⁸ The alternative to market-driven local coin rate-based fees or the default 35¢ charge recognized by the Order -- i.e., payphone usage fees negotiated between an IXC and the PSPs -- is not a viable alternative for Touch 1. Simply put, Touch 1 is not large enough to allocate the resources to such individual negotiations. See generally C&W Petition at 9 -10.

¹⁹ See generally Petitions of Sprint (at 10 - 13), and of C&W (at 8 - 9).

LEC payphones to transmit the "27" coding digits as a part of their automatic number identification ("ANI"), to assist IXC's in identifying payphones and detecting fraud.²⁰ As MCI points out the "07" coding digits do not allow IXC's to identify calls from payphones on a real-time basis because the "07" coding digits indicate only that a line is restricted, not that it is a payphone. Touch 1 further agrees with MCI and AT&T that only payphones which are in compliance with this coding digit transmission requirement should be entitled to per-call compensation for toll free and access code calls.²¹

Another matter raised by MCI also merits the Commission's attention. Touch 1 agrees with MCI that PSPs should be required to submit ANIs for payment of compensation within three, rather than twelve, months. MCI is correct that allowing PSPs to submit demands for compensation up to fifteen months after a toll free or access code call is placed would not only significantly increase administrative burdens and costs for IXC's, but would reduce their opportunities for collection from end users.²²

²⁰ Petition of MCI (at 7 - 8, 13 - 14, 18 - 19).

²¹ Petitions of AT&T (at 23), MCI (at 9) and Sprint (at 18).

²² Petition of MCI (at 20 - 21).

III.

CONCLUSION

By reason of the foregoing, Touch 1 Communications, Inc. urges the Commission to reconsider its Report and Order in this proceeding to the extent, but only to the extent, recommended in these comments.

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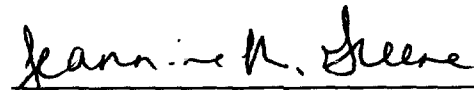
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